the third party that he is acting in a personal transaction undertaken for his own benefit. Here the officer is not purporting to act as agent and this distinguishes the case from those in the second class although the act is the same. *Manhattan Life Ins. Co.* v. *Forty-Second St. Ry. Co.* (1893) 139 N. Y. 146. Summarizing, then, it appears that in the first class the officer purporting to act as agent does an act within his holding out; in the second he purports to act as agent sed quære as to whether the issuing of the forged certificate is within his holding out; in the third still purporting to act as agent he acts outside his apparent authority and in the fourth he does not act as agent even assuming that the act of issuing the forged certificate would be within his apparent authority. Recalling the facts of the principal case in which the officer acting in a personal transaction and so understood by the plaintiff, did not purport to issue the forged certificate but to assign it as outstanding stock it will be seen that neither principle nor precedent may be invoked for its support. It is not within the second class since he neither purported to act as agent nor acted within his apparent authority. Even assuming that he acted as agent it would be contrary to the rule in the third class since the act was outside his apparent authority, and again even assuming that he did an act within his apparent authority, in conflict with the rule in the fourth class since he was not acting as agent. The court regrets its decision but deems itself bound by the case of *Shaw* v. *Port Phillip Mining Co.* (1884) 13 Q. B. D. 103. But in this case the officer purporting to act as agent issued the forged certificate instead of assigning outstanding shares in a personal transaction and the case falls within the second class and is in accord with *Fifth Ave. Bank* v. *Forty-Second St. R. R. Co.*, supra.

LEGAL MONOPOLIES AND CONTRACTS IN RESTRAINT OF TRADE.—Patents and copyrights are the classical examples of perfect monopolies and where they are concerned there is a relaxation of the restrictions imposed by public policy on contracts in restraint of trade. The fact that the contract fixes the price at which patented articles shall be sold, confines their sale to a limited territory, or restricts their output, does not render it illegal, since these are rights included in the monopoly granted by the government, *Bement* v. *National Harrow Co.* (1902) 186 U. S. 70. And this is so notwithstanding the fact that these restrictions are generally held illegal when such contracts are made with reference to unpatented articles, *Arnot* v. *P. & E. Coal Co.* (1877) 68 N. Y. 558; 2 COLUMBIA LAW REVIEW 166. Trade unprotected by patents may also be unlawfully restrained by the imposition of other conditions than a fixed price, a limited field of operation or a restricted supply, as, for instance, in *Curran* v. *Galen* (1897) 152 N. Y. 33, where by contract a manufacturer bound himself to employ only members of a certain labor union. By a recent decision in New York there is an indication that in the case of patents as well the conditions which may be lawfully imposed are limited. *Straus* v. *American Publishers' Assn.* (1904) 177 N. Y. 473. In

that case the publishers of copyrighted books agreed among themselves that each would fix a retail price for his copyrighted books and would refuse to sell either copyrighted or uncopyrighted books to any dealer who would not maintain that price. The court held the agreement illegal, since it embraced books unprotected by copyrights as well as those copyrighted, the latter only being proper subjects of regulation. That the combination alone was not enough to render the agreement illegal is indicated by the case of *Park* v. *National Druggists' Assn.* (1903) 175 N. Y. 1, where it was held that patentees might agree that each would fix a price for his article, would sell at a fixed discount to dealers who would agree to maintain that price, and would refuse the discount to dealers who would not so agree.

In *Diamond Match Co.* v. *Roeber* (1887) 106 N. Y. 473, it is laid down that whether or not contracts are in restraint of trade depends on their reasonableness, and this test has not only been generally followed at common law, but is applicable to-day under the New York Anti-Trust Act. 4 COLUMBIA LAW REVIEW 83, 89. The only objection to applying this test to combinations respecting patents or copyrights would be that by virtue of the peculiar privilege granted by the Government, conditions otherwise illegal are allowed; but this statutory privilege can only include those rights which actually are granted, either expressly or by reasonable implication, and, therefore, any other rights claimed must be governed by the same test that is applied to cases where no patent or copyright is involved. A contract fixing a price, limiting territory for selling or restricting output is generally held unreasonable, and so illegal, at common law; but the right to do these things is included in the grant of letters patent, and it cannot be illegal to exercise that right over patented articles. When, however, other rights in addition are claimed, if they cannot be shown to be expressly or impliedly included in the special grant of letters patent they must be subjected to the common law test of reasonableness. Such being the distinctions which the courts have recognized the two New York cases, supra, may be reconciled. In the Park case the patentees claimed the right to combine and agree not to give a discount to any dealer who would not maintain their prices. In the Straus case the publishers claimed the right to combine and agree not to sell any books at all to a dealer who would not maintain their prices. In each case the right to fix prices was included in the grant of patent and copyright respectively—in the former no additional unreasonable restriction was found, while in the latter the restraint of trade in uncopyrighted books was held to be unreasonable.

REASONABLENESS OF A MUNICIPAL ORDINANCE—A QUESTION FOR COURT OR JURY.—Shall the question of the reasonableness of a license fee, imposed by virtue of a municipal ordinance upon property of a telegraph company doing an interstate business, be left for determination to a jury? The view of the United States Supreme Court may be gathered from its two recent decisions in *Atlantic and Pacific Telegraph Co.* v. *Philadelphia* (1903) 190 U. S. 160 and *Postal Telegraph-*